

**United States Department of Labor
Employees' Compensation Appeals Board**

S.R., Appellant

and

**DEPARTMENT OF THE ARMY, RESERVES
COMMAND, Fort McCoy, WI, Employer**

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**Docket No. 17-1512
Issued: December 12, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 29, 2017 appellant filed a timely appeal from a June 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established permanent impairment of a scheduled member due to his work-related injuries, warranting a schedule award.

FACTUAL HISTORY

On May 13, 2014 appellant, then a 60-year-old heavy mobile equipment repairer, filed an occupational disease claim (Form CA-2) alleging that he was exposed to asbestos. He did not note on the claim form whether he had stopped work.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated April 26, 2016, OWCP notified appellant that it had scheduled an appointment with a second opinion physician in order to determine the nature and extent of his claimed condition.

In a report dated May 11, 2016, Dr. Tehmina Badar, Board-certified in pulmonary disease, noted contact with and suspected exposure to asbestos and diagnosed chronic obstructive pulmonary disease (COPD); and a personal history of nicotine dependence. In an attached letter dated May 16, 2016, she noted that a computerized tomography (CT) scan of appellant's chest demonstrated evidence of asbestosis. Dr. Badar concluded that it was highly unlikely that the abnormalities in the CT scan were the result of nicotine dependence or exposure from smoking.

By decision dated September 1, 2016, OWCP accepted his claim for mild COPD and contact with and suspected exposure to asbestos.

On September 6 and 14, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated September 16, 2016, OWCP informed appellant that it had not received any medical evidence in support of his schedule award claim. It explained the requirements of medical evidence in order for his schedule award claim to be accepted, including that the impairment report must be rendered according to the sixth edition American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Appellant was afforded 30 days to submit the necessary evidence.

In an undated letter, appellant stated that he lived in a small town and there was no local physician who would perform an impairment rating.

As noted in a record of a telephone conversation dated March 7, 2017, appellant told OWCP's representative that he did not have a treating physician and obtained his medical care through the Department of Veterans Affairs. The representative explained to appellant that OWCP required a medical report with a date of maximum medical improvement (MMI) and an impairment rating. Appellant did not submit additional evidence within the time allotted.

By decision dated June 5, 2017, OWCP denied appellant's claim for a schedule award. It noted that he had not submitted medical evidence containing a date of MMI, a description of any permanent impairment, or an impairment rating.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For

² A.M.A., *Guides* (6th ed. 2009).

³ *Supra* note 1 at 8107.

⁴ 20 C.F.R. § 10.404 (2011).

consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For decisions after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁷ Chapter 5 of the A.M.A., *Guides* addresses the framework to be used for addressing the pulmonary system.⁸ Table 5-4, Pulmonary Dysfunction, describes four classes of pulmonary dysfunction based on an assessment of history, physical findings, and objective tests, including a comparison of observed values for certain ventilatory function measures and their respective predicted values.⁹ The appropriate class of impairment is determined by the observed values for the FVC, FEV₁, or DLco, measured by their respective predicted values. If one of the three ventilatory function measures, FVC, FEV₁, or DLco or the ratio of FEV₁ to FVC, stated in terms of the observed values, is abnormal to the degree described in classes 1 to 4, then the individual is deemed to have an impairment which would fall into that particular class of impairments, either class 1, 2, 3, or 4, depending on the severity of the observed value.¹⁰

OWCP's procedures provide that all claims involving impairment of the lungs will be evaluated by first establishing the class of respiratory impairment, following the A.M.A., *Guides* as far as possible. Awards are based on the loss of use of both lungs and the percentage for the applicable class of whole person respiratory impairment will be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable in the schedule award.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a ratable permanent impairment due to his accepted conditions of mild chronic obstructive pulmonary disease and contact with and suspected exposure to asbestos.

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of any employment injury.¹² OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 3, section 1.3, The ICF, Disability and Health: A Contemporary Model of Disablement.

⁸ *Id.* at 77-99.

⁹ *Id.* at 88.

¹⁰ *Id.*

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(d)(1) (January 2010). See *R.G.*, Docket No. 15-209 (issued April 29, 2015).

¹² *Tammy L. Meehan*, 53 ECAB 229 (2001).

which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹³

Appellant has not submitted any medical evidence containing a date of MMI, a description of the impairment, and a computation of the percentage of impairment in accordance with the A.M.A., *Guides*. While he has submitted medical reports establishing his accepted work-related conditions, these reports did not contain the necessary elements to support a claim for a schedule award. As such, appellant has not met his burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established a permanent impairment of a scheduled member due to his work-related injuries warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2017 is affirmed.

Issued: December 12, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013). See *V.W.*, Docket No. 17-976 (issued August 25, 2017).